Review of the Opinion of the Supreme Court of Massachusetts · 1855

REVIEW OF THE OPINION

OF THE

SUPREME JUDICIAL COURT OF MASSACHUSETTS,

IN THE CASE OF

OLIVER EARLE AND OTHERS, IN EQUITY,

VERSUS

WILLIAM WOOD AND OTHERS.

By the Representatives of the Yearly Meeting of Friends for New England.

TO WHICH IS ADDED,

THE SUBSTANCE OF THE ARGUMENT PREPARED BY ONE OF THE COUNSEL FOR THE DEFENDANTS.

BOSTON:
PRESS OF T. R. MARVIN, 42 CONGRESS STREET.
1855.

At a Meeting of the Representatives of the Yearly Meeting of Friends for New England, held at North Providence, on the 20th of Second Month, 1855, the following minute was adopted, namely:

"The Opinion of the Supreme Judicial Court of Massachusetts in the case of Oliver Earle and others against William Wood and others, having been read in this Meeting at a former sitting, was referred to a Committee for their consideration, as a matter affecting the welfare and reputation of our Religious Society, inasmuch as many of the principles therein laid down, and represented to be binding upon all our members, both as regards the discipline and doctrines of Friends, are such as have never been known or recognized by the Society; and if admitted would be subversive alike of our civil rights and religious privileges. The Committee at this time produced a Review of said Opinion, wherein some of the manifestly erroneous and dangerous views of the Court are adverted to, and their inconsistency set forth; and also the long established and unchangeable character of the doctrines of Friends, as well as the correct principles and usages of our system of Church Government maintained, in regard to the matters under consideration;—which Review has been read in and approved by this Meeting and is directed to be printed;—and one of the legal counsellors employed by our Friends of Swanzey Monthly Meeting in the preparation and advocacy of their cause, having addressed an explanatory letter to the Committee, and also furnished them with the substance of the argument prepared by him and his colleagues in defence of the case, in an important aspect of it, in which many unquestionable authorities and much legal evidence showing the untenable nature of the ground upon which the Opinion appears to be based, are adduced and enforced, it was concluded that it would be best to append the same to the Review."

Extracted from the Minutes of the Meeting aforesaid, by

HARVEY CHACE,
Clerk for the time.

Review of the Opinion of the Supreme Judicial Court of Massachusetts in the case of Oliver Earle and others, in equity, vs. William Wood and others. *

The opinion of the Court in this case delivered by Chief Justice Shaw in the Fourth Month, 1852, but recently published, involves important matters concerning the internal polity and long established usages and principles of the Society of Friends; and, as we believe, sets forth very erroneous positions in relation thereto. We have therefore felt it a duty briefly to remark upon some of those mistaken grounds and views which appear to be calculated to open more widely the way for innovations upon our ancient doctrines and testimonies, and to encourage those sad departures therefrom which have so extensively prevailed of late years.

A large portion of the "Opinion" is devoted to a recital of the respective claims and pleas of the parties, and a consideration of the deed by which the property in question was originally conveyed to trustees, and the legal rights resulting therefrom, as well as the laws and precedents bearing upon the capacity of trustees or overseers of Monthly Meetings to hold property in trust for the Society. With these subjects, which

---

* In the original action, which was for the recovery of a meeting-house and lot, in Fall River, belonging to Swanzey Monthly Meeting of Friends, William Wood and others, Overseers of that Monthly Meeting, were the plaintiffs. At the time of the separation there, they were in possession of the house and lot, that is, they had charge of the same as care-takers; but the party represented by Oliver Earle and others took forcible possession of the property, taking off the locks and substituting others. Not desiring any contest of this sort, Friends brought the action as before stated. Subsequently Oliver Earle and others filed a bill in equity, which superseded the action at law and reversed the position of the parties, making O. Earle and others plaintiffs, and W. Wood and others defendants.

At a Meeting of the Representatives of the Yearly Meeting of Friends for New England, held at North Providence, on the 20th of Second Month, 1855, the following minute was adopted, namely:

"The Opinion of the Supreme Judicial Court of Massachusetts in the case of Oliver Earle and others against William Wood and others, having been read in this Meeting at a former sitting, was referred to a Committee for their consideration, as a matter affecting the welfare and reputation of our Religious Society, inasmuch as many of the principles therein laid down, and represented to be binding upon all our members, both as regards the discipline and doctrines of Friends, are such as have never been known or recognized by the Society; and if admitted would be subversive alike of our civil rights and religious privileges. The Committee at this time produced a Review of said Opinion, wherein some of the manifestly erroneous and dangerous views of the Court are adverted to, and their inconsistency set forth; and also the long established and unchangeable character of the doctrines of Friends, as well as the correct principles and usages of our system of Church Government maintained, in regard to the matters under consideration;—which Review has been read in and approved by this Meeting and is directed to be printed;—and one of the legal counsellors employed by our Friends of Swanzey Monthly Meeting in the preparation and advocacy of their cause, having addressed an explanatory letter to the Committee, and also furnished them with the substance of the argument prepared by him and his colleagues in defence of the case, in an important aspect of it, in which many unquestionable authorities and much legal evidence showing the untenable nature of the ground upon which the Opinion appears to be based, are adduced and enforced, it was concluded that it would be best to append the same to the Review."

Extracted from the Minutes of the Meeting aforesaid, by

HARVEY CHACE,
Clerk for the time.

Review of the Opinion of the Supreme Judicial Court of Massachusetts in the case of Oliver Earle and others, in equity, vs. William Wood and others. *

The opinion of the Court in this case delivered by Chief Justice Shaw in the Fourth Month, 1852, but recently published, involves important matters concerning the internal polity and long established usages and principles of the Society of Friends; and, as we believe, sets forth very erroneous positions in relation thereto. We have therefore felt it a duty briefly to remark upon some of those mistaken grounds and views which appear to be calculated to open more widely the way for innovations upon our ancient doctrines and testimonies, and to encourage those sad departures therefrom which have so extensively prevailed of late years.

A large portion of the "Opinion" is devoted to a recital of the respective claims and pleas of the parties, and a consideration of the deed by which the property in question was originally conveyed to trustees, and the legal rights resulting therefrom, as well as the laws and precedents bearing upon the capacity of trustees or overseers of Monthly Meetings to hold property in trust for the Society. With these subjects, which

---

* In the original action, which was for the recovery of a meeting-house and lot, in Fall River, belonging to Swanzey Monthly Meeting of Friends, William Wood and others, Overseers of that Monthly Meeting, were the plaintiffs. At the time of the separation there, they were in possession of the house and lot, that is, they had charge of the same as care-takers; but the party represented by Oliver Earle and others took forcible possession of the property, taking off the locks and substituting others. Not desiring any contest of this sort, Friends brought the action as before stated. Subsequently Oliver Earle and others filed a bill in equity, which superseded the action at law and reversed the position of the parties, making O. Earle and others plaintiffs, and W. Wood and others defendants.

are of general application, and of equal bearing upon whichever party is justly entitled to be recognized as truly representing the Society of Friends, in the matter at issue; and which are doubtless correctly stated by the Court, we have no controversy. But when they come to lay down the principles by which the Society should be governed in regard to the preservation of its Doctrines, and the administration of its Discipline, we find much which we cannot admit to be correct.

After disposing of the preliminaries above referred to, and stating that there are two conflicting bodies claiming to be Rhode Island Quarterly Meeting and New England Yearly Meeting, to which Swanzey Monthly Meeting belongs, Judge Shaw for the Court, says:—

"We are thus necessarily driven to the inquiry, which of these conflicting organizations is the true and legitimate successor, or, to speak more accurately, which of the two Yearly Meetings for New England, the two Rhode Island Quarterly Meetings and the two Swanzey Monthly Meetings, are the actual, identical, and real Yearly, Quarterly, and Monthly Meetings of the Society of Friends of those respective designations, and have continued so in one unbroken line, from a period anterior to this controversy, to the time of the commencement of this suit. The one must be so; when this is shown, it will also be shown that the other is not so.

"By what test shall this fact of identity and continuity be determined?

"At one stage of this controversy, it seemed to be supposed that it would depend mainly upon soundness of faith; an adherence to or dissent from speculative theological opinions and belief, and much evidence was taken upon that subject, and it was alluded to in the learned arguments addressed to us.

"It would seem to be inconsistent with the nature and principles of the Quaker system, so far as it is disclosed in the case before us, to be bound down, as a body, as a Christian denomination, to a precise unbending rule, in matters of speculative opinion. They profess to believe in the continued influence and presence of the Holy Spirit to the mind of each individual, humbly waiting for its manifestation, to aid in the discovery of divine truth. It would seem, therefore, that they must suppose it possible, that new truths may be discerned, and so manifested as to require the assent of the true disciple, and thus add something to his existing faith. It is also true, as we understand, that they profess to believe that the Scriptures are given by inspiration, and are the unerring guide to Christian truth; and if any man suppose that he has an inward light contrary or repugnant to the truth of the Scriptures, it cannot be a true light. But, perhaps, there is no inconsistency in believing that the Scriptures of the Old and New Testament are a true and unerring guide to divine truth, yet, that all the truths of Scripture have not yet been made manifest to the imperfect mind of

Review of the Opinion of the Supreme Judicial Court of Massachusetts in the case of Oliver Earle and others, in equity, vs. William Wood and others. *

The opinion of the Court in this case delivered by Chief Justice Shaw in the Fourth Month, 1852, but recently published, involves important matters concerning the internal polity and long established usages and principles of the Society of Friends; and, as we believe, sets forth very erroneous positions in relation thereto. We have therefore felt it a duty briefly to remark upon some of those mistaken grounds and views which appear to be calculated to open more widely the way for innovations upon our ancient doctrines and testimonies, and to encourage those sad departures therefrom which have so extensively prevailed of late years.

A large portion of the "Opinion" is devoted to a recital of the respective claims and pleas of the parties, and a consideration of the deed by which the property in question was originally conveyed to trustees, and the legal rights resulting therefrom, as well as the laws and precedents bearing upon the capacity of trustees or overseers of Monthly Meetings to hold property in trust for the Society. With these subjects, which

---

* In the original action, which was for the recovery of a meeting-house and lot, in Fall River, belonging to Swanzey Monthly Meeting of Friends, William Wood and others, Overseers of that Monthly Meeting, were the plaintiffs. At the time of the separation there, they were in possession of the house and lot, that is, they had charge of the same as care-takers; but the party represented by Oliver Earle and others took forcible possession of the property, taking off the locks and substituting others. Not desiring any contest of this sort, Friends brought the action as before stated. Subsequently Oliver Earle and others filed a bill in equity, which superseded the action at law and reversed the position of the parties, making O. Earle and others plaintiffs, and W. Wood and others defendants.

are of general application, and of equal bearing upon whichever party is justly entitled to be recognized as truly representing the Society of Friends, in the matter at issue; and which are doubtless correctly stated by the Court, we have no controversy. But when they come to lay down the principles by which the Society should be governed in regard to the preservation of its Doctrines, and the administration of its Discipline, we find much which we cannot admit to be correct.

After disposing of the preliminaries above referred to, and stating that there are two conflicting bodies claiming to be Rhode Island Quarterly Meeting and New England Yearly Meeting, to which Swanzey Monthly Meeting belongs, Judge Shaw for the Court, says:—

"We are thus necessarily driven to the inquiry, which of these conflicting organizations is the true and legitimate successor, or, to speak more accurately, which of the two Yearly Meetings for New England, the two Rhode Island Quarterly Meetings and the two Swanzey Monthly Meetings, are the actual, identical, and real Yearly, Quarterly, and Monthly Meetings of the Society of Friends of those respective designations, and have continued so in one unbroken line, from a period anterior to this controversy, to the time of the commencement of this suit. The one must be so; when this is shown, it will also be shown that the other is not so.

"By what test shall this fact of identity and continuity be determined?

"At one stage of this controversy, it seemed to be supposed that it would depend mainly upon soundness of faith; an adherence to or dissent from speculative theological opinions and belief, and much evidence was taken upon that subject, and it was alluded to in the learned arguments addressed to us.

"It would seem to be inconsistent with the nature and principles of the Quaker system, so far as it is disclosed in the case before us, to be bound down, as a body, as a Christian denomination, to a precise unbending rule, in matters of speculative opinion. They profess to believe in the continued influence and presence of the Holy Spirit to the mind of each individual, humbly waiting for its manifestation, to aid in the discovery of divine truth. It would seem, therefore, that they must suppose it possible, that new truths may be discerned, and so manifested as to require the assent of the true disciple, and thus add something to his existing faith. It is also true, as we understand, that they profess to believe that the Scriptures are given by inspiration, and are the unerring guide to Christian truth; and if any man suppose that he has an inward light contrary or repugnant to the truth of the Scriptures, it cannot be a true light. But, perhaps, there is no inconsistency in believing that the Scriptures of the Old and New Testament are a true and unerring guide to divine truth, yet, that all the truths of Scripture have not yet been made manifest to the imperfect mind of

man, and in the language of Father Robinson of Leyden, that 'more truth is yet to break forth from the Holy Scriptures.' Should such be the fact, should the testimony of the Scriptures and the influences of the Holy Spirit concur in bringing to the conviction of humble, sincere, and inquiring minds, the knowledge of further Christian truths, manifested with a brilliancy and clearness not to be mistaken, it seems perfectly consistent with the avowed principles of the Society of Friends, to adopt and sanction them, although they were not known to Pennington, Barclay, Fox, and the respected founders of the Society, and under a full belief, that if the same light had been thrown on the same truths in their day, these sincere and seeking men would have humbly and devoutly embraced them.

"We would not be supposed by this to intimate that the Quakers have no creed, no theological tenets to which they are strongly attached, and no superintending watchfulness over the soundness of the faith of their members and subordinate meetings, or that they allow any great latitude of discussion to their members on theological subjects. On the contrary, the Discipline expressly prohibits the publication of all writings relating to their religious principles or testimonies, unless first laid before the Meeting for Sufferings, for their advice and concurrence, and obtaining their approval of them.

"What we mean to say, is this; that, if after solid and weighty consideration, humbly and conscientiously awaiting the guide of best wisdom, the Yearly Meeting should fully unite in the proper as well as the Quaker sense of that word, in adopting some modification of their creed, or of their speculative opinions, adhering to their great principles of love and fraternal duty, it would, upon their professed principles, seem too much to say, that they would thereby cease to be Quakers, and cease to be the Society of Friends. Especially, we think, this could not be asserted by Meetings and individuals subordinate to them, who owe, ecclesiastically, allegiance to them, and to whom, so long as they remain subordinate, the decisions are final and infallible, as well in matters of faith as of conduct. All disaffected members, having full liberty of conscience, might undoubtedly depart from such opinions, and adopt different tenets; perhaps they might, by so doing, become better theologians, better Christians, and better men; but they would cease to be Friends in unity with such Yearly Meeting, and with the Meetings and individuals subordinate to it. Such dissenting individuals might form themselves into Yearly, Quarterly, and Monthly Meetings, but this would be a new organization, and not the identical body to which they had been formerly attached.

"We should be unwilling to say, that there may not be a departure from the fundamental principles on which the Society is founded, on the part of the Yearly Meeting, the responsible head and representative of the whole body, in fact the Society itself, so deep and radical, as to destroy its identity with the Society of Friends, who had been invested by law with the enjoyment of property and civil rights. But if such a case be possible, it would seem to be a suicidal destruction of the body itself, leaving its property derelict. If heresy should infect individuals only, however numerous, they might be disowned and cast off, and the body remain sound, but if the ultimate and infallible judge of what is essential to Quakerism judges wrong, who, in pursuance of

any of the forms, principles, or discipline of Quakerism, shall declare the heresy, or pronounce the disownment? But it is not necessary to pursue such a remotely possible supposition; we have barely alluded to it, by way of protest against the conclusion, that no departure from Christian truth and the principles of Quakerism, can be so great as to work a dissolution of the Society."

In the first place we may remark that doctrines grounded upon plain Scripture testimony, as are those of the Society of Friends, have never been admitted by them to be *speculative*, a term which implies, ideal, theoretical only; not practical. Now the doctrines of the Society of Friends are not only practical, but they are also definite and tangible, as laid down by the coincident publications of Fox, Penn, and Barclay, and many other approved writers, and have been held by all the Yearly Meetings in the world to be the true Christian divinity. And in every part of the Society, those members who have departed from these original doctrines, or have adopted others contrary thereto, have been accounted apostates from Quakerism. How would it be with the Court, liberal as they seem to be, were we to suppose a case of dissension and separation in the Society, divested of all other considerations except the single question of doctrines, (which being the basis and bond of its union, must be acknowledged to be of the first importance,) the one part continuing faithfully to adhere to the original doctrines, while the other part have imbibed and are disseminating such as are repugnant thereto:—which of these parties would they adjudge to be seceders, and which to be the original Society? without regard to the supposed correctness or incorrectness of the views of either party, judged by any other than their own standard, and without regard to the manner of separation, or to numbers? And whether it be a Yearly Meeting that is divided upon such ground, or whether it be smaller bodies, would not their decision be the same?

But, perhaps, the Court had regard to the *amount* of difference required to justify a condemnation of the seceding party:—if so, they have not told us how great the difference must be—whether any thing short of infidelity, in those who depart from our principles, or even whether that would be enough to entitle those holding to first principles to their temporal rights. Whatever degree of firmness or decision the Court may have arrived

at in relation to other principles, they appear to have had so little conception of the stability and definiteness of the faith of the Society of Friends, as to suppose their principles might be very elastic and accommodating; susceptible of being bended this way or that way to suit occasions. But will it do to bend the Christian faith and doctrines, so as to meet the caprice of mere speculative reasoners? George Fox could be neither flattered nor driven from his *unbending* rule, either by Oliver Cromwell or by Charles II., nor yet could his faithful contemporaries in profession. If they could have been so, by the efforts of a world of professors, Quakerism would have been stifled in its infancy, as now attempted in its maturer years. If Socinius, or Elias Hicks, or J. J. Gurney, or the Supreme Judges of Massachusetts, have mistaken a retrograde course for an advancement in Christianity, it is a matter not a little to be lamented, and especially so should the Bench go into reasonings which tend to strengthen the modern innovators upon primitive vital Christianity!

Well aware of what has been attempted, the Judge actually advocates the right of a Yearly Meeting to modify the creed of the Society, or in other words, to change its principles; and asserts that such a step taken by a Yearly Meeting should be binding upon all its subordinate Meetings and its members! That a Yearly Meeting should have the power to change the principles of the Society and to compel the subordinate Meetings and members to follow them in that change, or be deprived of their meeting-houses, are doctrines new and strange to old-fashioned Quakers, and would be, we conceive, to others, upon any other ground than the papal dogma that the Church cannot err.—In alluding to such a change of principle [as the Gurneyites have made, we suppose] he says,—"it would, upon their professed principles, seem too much to say that they would thereby cease to be the Society of Friends." But how wide a difference in principle might be entertained, and still all be good Quakers, he has not shown us. Nevertheless he is at issue with those whose cause he favors; for *they* thought those who renounced Gurney's doctrines and held to first principles, were too far asunder from *them*, to be of the same fraternity, and for that reason *excommunicated* such, their sound and consistent Quaker brethren; which excommunication was sanctioned by

their Yearly Meeting; whose decisions the Court declare to be final and *infallible*, as well in matters of faith as of conduct!

Does the Judge allude to the defendants when he says, "All disaffected members, having full liberty of conscience, might undoubtedly depart * from such *opinions*," to-wit, those *modified opinions*, the right of a Yearly Meeting to adopt and enforce which, he had just been advocating? If so, we must think his logic had quite failed him, for no man can be said to depart from an opinion which he never held. And it is true of the defendants, and has never been denied, that *they* hold to no modification of Quaker principles; and were never disaffected with or alienated from the original doctrines of the Society of Friends, and have adopted no other. But, notwithstanding the latitudinarian views thus put forth by the Court, we submit that not these, but those whether few or many, who depart from the original principles of the Society, would cease to be Friends in unity with a sound Yearly Meeting—and if out of unity with a sound body, then no Friends.

Sentiments are advanced by the Court which seem calculated to make way for an innovation upon Christian doctrines in general, and in an especial manner upon the doctrines of the Society of Friends, such as has been effected by the Hicksites on the one hand, and by the Gurneyites on the other; allowing other doctrines to be brought forward not known (as says the Judge) to Pennington, Barclay, and Fox—which proceeding he says, "seems perfectly consistent with the avowed principles of the Society of Friends"!!—Such was never admitted by the persons named, nor by any of the accredited writers of the Society in their day—but they held the very reverse. They always affirmed that they had no new doctrines to advance or

---

* Since the foregoing was written, we have seen a copy of this passage, in which this word is given "dissent" instead of "depart." Whether this is a mistake of the copyist or printer, we know not, or whether it is a verbal amendment by the Court of the original Opinion. But it matters little which word was actually used, as in continuation of the sentence after the words "depart [or dissent] from such opinions," is added, "and adopt different tenets," which implies the same thing. We were furnished by the Reporter of the Court with a *certified* copy of the Opinion, in which the word is "depart"—and we notice several other verbal discrepancies, between copies which have been circulated in print, and our certified copy, showing that some such amendments were made, but in no other case, as we have observed, at all affecting the sense.

to promulgate; but only those preached by Christ and his Apostles, as already set forth in the Holy Scriptures—that whatever any man may pretend to, if it do not accord with the Holy Scriptures, is heresy and not to be believed.—So also, if any man claim to be a Friend, and pretend to a "knowledge of further Christian truths," and even that they are "manifested with a brilliancy and clearness not be mistaken," yet if they *contradict* the acknowledged principles of the Society, which it has always hitherto maintained—they must be held to be heretical, and he who promulgates them to be off the true Quaker ground. If any thing is to be found in the writings of any who call themselves Friends, to favor the view taken by the Court on this subject, we think it must be among the corrupted sentiments of one or the other of those deviating parties called Hicksites or Gurneyites.

After this elaborate attempt to prove that a change of principles does not alter the character or affect the identity of a religious body, the Judge declares that this "unhappy controversy arose out of a *jealousy* or *apprehension*, on the part of some of the Quaker body, that another part were covertly* circulating and endeavoring to promote false doctrines," &c.; were endeavoring to advance and promote the works and tenets of Joseph John Gurney, which, however, they (the Gurneyite party) denied! But does the denial of a fact so well known, invalidate a volume of testimony clearly going to prove it? Indeed, it is now confessed by some of the leading Gurneyites themselves, that Gurney's doctrines are sound, and are a good and necessary addition to the primitive doctrines, apparently forgetting their manifest contradiction of them. Is a denial or negative of more force in a court of law than an affirmative? and should not so much testimony as was adduced clearly proving the Gurneyite party *in all its capacities*, to have acted in support of J. J. Gurney and his doctrines, (inasmuch as a man's acts are stronger evidence than his words,) to have more force than a mere denial?—Can we suppose that the Court could have overlooked this important fact; that divers consistent Friends were disowned by the Gurneyite party for openly expressing their dissent from J. J. Gurney's doctrines? Friends too, whom they had

* *Covertly*, because they denied their discordancy with Quakerism.

loved, and against whom they had no other accusation left them to make. There can be no stronger proof of their attachment to "Gurneyism" than this; especially when we consider the extent to which they perverted and disregarded the Discipline and usages of the Society (in order to compass this end) in vindication and defence of it.—These proceedings were confirmed and approbated by Rhode Island Quarterly Meeting and by New England Yearly Meeting. And Philadelphia Yearly Meeting, after a thorough and impartial investigation say, in their "Report," that the portion of the Society which are identified with the defendants in this suit, "have been subjected to proceedings oppressive in their character, and in violation of the acknowledged principles of Church Government." And subsequently, in speaking of what they call the "larger body," they say "their acts have gone to condemn many who have been standing for the ancient faith of Friends, and against the introduction of error; that in so doing *wrong opinions have received support*, and the Discipline and the rights of members have been violated." Moreover it was proved to the Court, that New England Yearly Meeting gave to J. J. Gurney a returning certificate, declaring their full unity with him, although it was objected to at the time, by those with whom these defendants are in unity, giving as a reason for their objections, that such certificate would be an endorsement of his doctrines:—a view which none offered to gainsay; and this certificate was signed on behalf of New England Yearly Meeting by Abram Shearman, Jr., its clerk, and recorded in its Book of Records. And this people represented in Court by the plaintiffs, had in their different capacities been entreated and expostulated with to clear themselves from the charge of holding to Gurney's doctrines, by a specific and public denial or refutation of them. Such a document put forth by them would undoubtedly have had the happy effect of putting an end to the controversy among the members of New England Yearly Meeting. Still, the Supreme Court of Massachusetts think that in very deed, this controversy arose from a mere jealousy.

If the plaintiffs and their associates had been clear of Gurney's doctrines, and had evinced that they were true Quakers, by manifesting a love of peace, good order and sound principles, how readily would they have done the thing so properly called

or, and so have given an infallible *test* of their fidelity. If they were truly honest Quakers, nothing could have been more easy, and they would have had a desire by so doing to satisfy their brethren.

But the Court say that the "Narration and Declaration" put forth in 1845, by the Gurneyite Yearly Meeting, "was satisfactory [as regards their '*belief*'] to those who affix the imputation of heresy to that same Yearly Meeting."

What foundation there is for this assertion, we know not; certain it is that those who affix that imputation, have not expressed themselves satisfied with that declaration of Faith, but the contrary—holding it to be defective, because it does not comprehend the *whole* of the Quaker confession of Faith, nor does it discard a single article of Gurney's unsound doctrines, which the Gurneyite body were charged with having adopted:—and having been so charged, it was indispensable in order to prove them true Quakers, that they should have specially acquitted themselves from those heretical opinions, this being the only true *Shibboleth*, the only certain test; which, however, *they still refused.* So far was this Narrative and Declaration from being satisfactory to the sound body, that they immediately put forth "*Strictures*" and comments upon it, setting forth their *dissatisfaction*, and showing that it had failed to renounce Gurney's doctrines, or to attempt a reconciliation of them with those of Friends. Abram Fisher, in his published "Notes," has well exposed and refuted the Narrative and Declaration, and has not been replied to.

But the Court did not see (as affirmed in their next paragraph) "any *evidence* that any other or different opinions had been advanced" [than those contained in the Declaration above alluded to.] Hence by their way of looking at things, a religious body might present to an infidel who had come among them and whose sentiments they knew, a writing duly executed, setting forth their full unity and fellowship with him, without implicating themselves at all in his views. Or, what is yet stronger, may disown their members for testifying against and exposing his principles, without incurring any just suspicion of holding or advancing his opinions!

Subsequently the Judge says, "The argument strongly urged is, that the opinions of Gurney were unsound, and that the friends of Gurney have endeavored secretly and by invidious

means to gain a predominance in the Quaker body, and that they have in fact gained an ascendency in the Quarterly and Yearly Meetings.—This," he says, "is an imputation of wrong motive and purpose in individuals, no proof appears to establish the truth of such imputation upon individuals, or if such motives did exist, that they had ever induced any Meeting to adopt any measures for the promulgation of false doctrines or unsound opinions."

It does not appear, as we have noticed, that the Court has definitely decided whether Gurney's doctrines or opinions are sound or unsound—that is, whether they are in conformity or not, with the original Quaker doctrines; but the *fact was fully proved* to the Court, though it seems not to have been regarded by them, that the *Meeting for Sufferings*, whether induced by individuals, or however otherwise it could be induced, took measures to *spread* Gurney's doctrines, and reported their having done so to the Yearly Meeting, and that the Yearly Meeting acknowledged its satisfaction therewith, and so recorded it on their book. Thus it is proved that Meetings of the highest order in the Society, if they have not *promulgated unsound doctrines* of their own, have taken effectual means to spread those of Gurney—and the "Appeal for the ancient doctrines of the Society of Friends," published by Philadelphia Yearly Meeting in 1847, gives ample proof of the unsoundness of Gurney's sentiments.

The Court having decided that Overseers are the legal trustees of the property in controversy, come next to test the question by that which "upon full consideration," they say, we consider the correct and proper standard, to wit:—whether Oliver Earle and his associates, the plaintiffs, or William Wood and his associates, the defendants, were the true and rightfully appointed Overseers of Swanzey Monthly Meeting, according to the Discipline acknowledged to be the Constitution, and to embody the fundamental laws of the Society of Friends." The Judge then says, "If they [the plaintiffs] were Overseers duly appointed according to the system of ecclesiastical polity acknowledged by the Society of Friends, they were the officers contemplated and designated by the statute," &c. Again, "The Legislature, in providing means for holding property in succession, for the use of Quakers, and designating Overseers of Monthly Meetings for that purpose,

must have intended Overseers appointed or set apart, *in an orderly manner*, according to the fundamental rules and usages of Quakers." And further touching the rightful appointment of Overseers, he says, "We must inquire and decide judicially by their rules [those of Friends] upon the regularity of these proceedings," &c.

And now, when coming to the acts of the Monthly Meeting, the Court admit that "*before the Meeting was opened by the Clerk*, Meader requested a pause, and made a statement of the doings of the previous Meeting, and proposed that the Meeting should unite in the appointment of David Shove, which one party testify was fully done, which the other party denied. Thomas Wilbur did not relinquish his seat, but persisted in acting as Clerk, and considerable disorder ensued."

To appoint a new Clerk before the Meeting was opened by the former, when present, is clearly an infraction upon the order and usages of New England Yearly Meeting, which was never before attempted; and manifested not only a spirit of disorder but also of domination and tyranny. For it was a person not belonging to that meeting who named David Shove for Clerk before the Meeting was opened, or organized for the transaction of any business whatever; in fact, *before* the session had legally commenced. And, as if to render the disorder more complete, those attending from other parts, produced no minute of appointment, or any evidence or credentials to certify in what capacity they were present. Hence it would seem agreeably to the Judge's own preliminaries, David Shove could be no other than a spurious Clerk, and consequently the body over which he presided, and by whom he was acknowledged, must be a "disorderly" and spurious body, and hence all its acts irregular and illegal, and no appointment of Overseers or other officers by that body could be valid.

After admitting that it can hardly be maintained that David Shove was chosen Clerk at the Meeting in the 7th mo., Judge Shaw says, "But the Meeting in August was attended by a Committee of the Quarterly Meeting, and other Friends; at this Meeting, David Shove at the opening, whether *regularly* or *irregularly*, was declared and proceeded to act as Clerk," &c. Why say *at the opening*, when he had just before said what was the fact, that this procedure took place "*before* the

Meeting was opened." And how, we would ask, could the appointment of David Shove, in the 8th month, be more valid than in the 7th, when it appears, according to one statement, he was proposed by three out of a committee of seven—at all events was proposed *in* the regular sitting of the Monthly Meeting after it was opened, and when it was at least competent to transact business. Will it be said that because the regular Clerk did not make a minute of his appointment, nor relinquish his seat, therefore the appointment was not made? Neither did he do the one or the other of these things, in the 8th month; but, as says the Judge, "Thomas Wilbur persisted in acting as Clerk." Will it be said that he was appointed by the action of the Committees in attendance? We answer there is neither usage nor Discipline to justify such action; besides, as has been already stated, the Meeting had not been opened, nor of course could those persons in attendance have been recognized as Committees therein! Well may the Judge say that David Shove was declared Clerk *regularly* or *irregularly*, and we think with the facts here stated, few will be at a loss to decide which.

Yet in the next paragraph the Court say, "We should be *inclined* to the opinion that at the August Meeting, Shove must be taken to be the authorized Clerk; that those who remained after the adjournment was announced, acted irregularly, and became seceders." But the adjournment was announced by Shove, a spurious Clerk, and therefore he and those who went out with him were the separatists. The Judge adds, "And if Shove was improperly elected, they should have sought their remedy by an appeal to the Quarterly Meeting," &c. A proposition wholly irrelevant to the case; and we conceive that the regular Meeting and Clerk would have been highly reprehensible had they then abandoned their most important trust and suffered such disorderly and confused proceedings to prevail.

Their duty clearly was to maintain the Monthly Meeting inviolable, and they did so, forwarding their usual account to the Quarterly Meeting. Besides, there is no provision in the Discipline for an appeal to the Quarterly Meeting for redress in any case of dissatisfaction in the appointment of officers; and how anomalous would it be to suppose that any number of disaffected persons, whoever they may be, might in this rude

manner, before the Meeting was opened for business, name for themselves a Clerk, and take the Meeting into their hands and go out where they pleased, and that those who with their regular Clerk, soberly and rightfully kept on in the house doing their business as usual, must give way to these innovators, and appeal to the Quarterly Meeting for redress! when, indeed, if such a secession is noticeable, no Superior Meeting has any rule of Discipline to try the seceders or separatists by; for such a disorder as the one in question was never so much as anticipated in those better days when the rules of Discipline were instituted. Not that these offenders would be amenable to no tribunal; for it would be the duty of their Monthly Meetings to take cognizance of them, and labor for their restoration, and if this could not be effected, then to disown and testify against them. Here would follow THEIR *right of Appeal to the Quarterly Meeting*, which would *then* have jurisdiction of the matter.

Philadelphia Yearly Meeting took up the whole case of the separation in New England as before observed, for the purpose of ascertaining the true and just rights of the parties therein, and their own proper relations to them; and after a careful and minute examination of the acts of both parties, they decided, and mainly upon the published statement of the "larger body" itself, that the Swanzey Monthly Meeting of which Thomas Wilbur continued Clerk, and the Quarterly Meeting which acknowledged it, were the true and legitimate Monthly and Quarterly Meetings, and consequently that those bodies with Shove and Buffum for Clerks, were illegitimate and spurious. The Yearly Meeting of Philadelphia must be acknowledged, as we think, to be a better judge of the rules of Discipline and usages of the Society of Friends, than any person or persons not conversant with their usages and system of Church Government; and they have also decided that it was the course pursued by the Gurneyite body in the transactions under investigation which *led to the separation*, thus justly making the new school chargeable therewith.

The Judge continues, "But if the case depended solely or mainly on this point, we should go into a more minute and thorough examination of the evidence, as to the exclusive authority of the Clerk for the time being to propose every question; and especially as to the right and power of Committees

At a Meeting of the Representatives of the Yearly Meeting of Friends for New England, held at North Providence, on the 20th of Second Month, 1855, the following minute was adopted, namely:

"The Opinion of the Supreme Judicial Court of Massachusetts in the case of Oliver Earle and others against William Wood and others, having been read in this Meeting at a former sitting, was referred to a Committee for their consideration, as a matter affecting the welfare and reputation of our Religious Society, inasmuch as many of the principles therein laid down, and represented to be binding upon all our members, both as regards the discipline and doctrines of Friends, are such as have never been known or recognized by the Society; and if admitted would be subversive alike of our civil rights and religious privileges. The Committee at this time produced a Review of said Opinion, wherein some of the manifestly erroneous and dangerous views of the Court are adverted to, and their inconsistency set forth; and also the long established and unchangeable character of the doctrines of Friends, as well as the correct principles and usages of our system of Church Government maintained, in regard to the matters under consideration;—which Review has been read in and approved by this Meeting and is directed to be printed;—and one of the legal counsellors employed by our Friends of Swanzey Monthly Meeting in the preparation and advocacy of their cause, having addressed an explanatory letter to the Committee, and also furnished them with the substance of the argument prepared by him and his colleagues in defence of the case, in an important aspect of it, in which many unquestionable authorities and much legal evidence showing the untenable nature of the ground upon which the Opinion appears to be based, are adduced and enforced, it was concluded that it would be best to append the same to the Review."

Extracted from the Minutes of the Meeting aforesaid, by

HARVEY CHACE,
Clerk for the time.

Review of the Opinion of the Supreme Judicial Court of Massachusetts in the case of Oliver Earle and others, in equity, vs. William Wood and others. *

The opinion of the Court in this case delivered by Chief Justice Shaw in the Fourth Month, 1852, but recently published, involves important matters concerning the internal polity and long established usages and principles of the Society of Friends; and, as we believe, sets forth very erroneous positions in relation thereto. We have therefore felt it a duty briefly to remark upon some of those mistaken grounds and views which appear to be calculated to open more widely the way for innovations upon our ancient doctrines and testimonies, and to encourage those sad departures therefrom which have so extensively prevailed of late years.

A large portion of the "Opinion" is devoted to a recital of the respective claims and pleas of the parties, and a consideration of the deed by which the property in question was originally conveyed to trustees, and the legal rights resulting therefrom, as well as the laws and precedents bearing upon the capacity of trustees or overseers of Monthly Meetings to hold property in trust for the Society. With these subjects, which

---

* In the original action, which was for the recovery of a meeting-house and lot, in Fall River, belonging to Swanzey Monthly Meeting of Friends, William Wood and others, Overseers of that Monthly Meeting, were the plaintiffs. At the time of the separation there, they were in possession of the house and lot, that is, they had charge of the same as care-takers; but the party represented by Oliver Earle and others took forcible possession of the property, taking off the locks and substituting others. Not desiring any contest of this sort, Friends brought the action as before stated. Subsequently Oliver Earle and others filed a bill in equity, which superseded the action at law and reversed the position of the parties, making O. Earle and others plaintiffs, and W. Wood and others defendants.

are of general application, and of equal bearing upon whichever party is justly entitled to be recognized as truly representing the Society of Friends, in the matter at issue; and which are doubtless correctly stated by the Court, we have no controversy. But when they come to lay down the principles by which the Society should be governed in regard to the preservation of its Doctrines, and the administration of its Discipline, we find much which we cannot admit to be correct.

After disposing of the preliminaries above referred to, and stating that there are two conflicting bodies claiming to be Rhode Island Quarterly Meeting and New England Yearly Meeting, to which Swanzey Monthly Meeting belongs, Judge Shaw for the Court, says :—

"We are thus necessarily driven to the inquiry, which of these conflicting organizations is the true and legitimate successor, or, to speak more accurately, which of the two Yearly Meetings for New England, the two Rhode Island Quarterly Meetings and the two Swanzey Monthly Meetings, are the actual, identical, and real Yearly, Quarterly, and Monthly Meetings of the Society of Friends of those respective designations, and have continued so in one unbroken line, from a period anterior to this controversy, to the time of the commencement of this suit. The one must be so; when this is shown, it will also be shown that the other is not so.

"By what test shall this fact of identity and continuity be determined?

"At one stage of this controversy, it seemed to be supposed that it would depend mainly upon soundness of faith; an adherence to or dissent from speculative theological opinions and belief, and much evidence was taken upon that subject, and it was alluded to in the learned arguments addressed to us.

"It would seem to be inconsistent with the nature and principles of the Quaker system, so far as it is disclosed in the case before us, to be bound down, as a body, as a Christian denomination, to a precise unbending rule, in matters of speculative opinion. They profess to believe in the continued influence and presence of the Holy Spirit to the mind of each individual, humbly waiting for its manifestation, to aid in the discovery of divine truth. It would seem, therefore, that they must suppose it possible, that new truths may be discerned, and so manifested as to require the assent of the true disciple, and thus add something to his existing faith. It is also true, as we understand, that they profess to believe that the Scriptures are given by inspiration, and are the unerring guide to Christian truth; and if any man suppose that he has an inward light contrary or repugnant to the truth of the Scriptures, it cannot be a true light. But, perhaps, there is no inconsistency in believing that the Scriptures of the Old and New Testament are a true and unerring guide to divine truth, yet, that all the truths of Scripture have not yet been made manifest to the imperfect mind of

man, and in the language of Father Robinson of Leyden, that 'more truth is yet to break forth from the Holy Scriptures.' Should such be the fact, should the testimony of the Scriptures and the influences of the Holy Spirit concur in bringing to the conviction of humble, sincere, and inquiring minds, the knowledge of further Christian truths, manifested with a brilliancy and clearness not to be mistaken, it seems perfectly consistent with the avowed principles of the Society of Friends, to adopt and sanction them, although they were not known to Pennington, Barclay, Fox, and the respected founders of the Society, and under a full belief, that if the same light had been thrown on the same truths in their day, these sincere and seeking men would have humbly and devoutly embraced them.

"We would not be supposed by this to intimate that the Quakers have no creed, no theological tenets to which they are strongly attached, and no superintending watchfulness over the soundness of the faith of their members and subordinate meetings, or that they allow any great latitude of discussion to their members on theological subjects. On the contrary, the Discipline expressly prohibits the publication of all writings relating to their religious principles or testimonies, unless first laid before the Meeting for Sufferings, for their advice and concurrence, and obtaining their approval of them.

"What we mean to say, is this; that, if after solid and weighty consideration, humbly and conscientiously awaiting the guide of best wisdom, the Yearly Meeting should fully unite in the proper as well as the Quaker sense of that word, in adopting some modification of their creed, or of their speculative opinions, adhering to their great principles of love and fraternal duty, it would, upon their professed principles, seem too much to say, that they would thereby cease to be Quakers, and cease to be the Society of Friends. Especially, we think, this could not be asserted by Meetings and individuals subordinate to them, who owe, ecclesiastically, allegiance to them, and to whom, so long as they remain subordinate, the decisions are final and infallible, as well in matters of faith as of conduct. All disaffected members, having full liberty of conscience, might undoubtedly depart from such opinions, and adopt different tenets; perhaps they might, by so doing, become better theologians, better Christians, and better men; but they would cease to be Friends in unity with such Yearly Meeting, and with the Meetings and individuals subordinate to it. Such dissenting individuals might form themselves into Yearly, Quarterly, and Monthly Meetings, but this would be a new organization, and not the identical body to which they had been formerly attached.

"We should be unwilling to say, that there may not be a departure from the fundamental principles on which the Society is founded, on the part of the Yearly Meeting, the responsible head and representative of the whole body, in fact the Society itself, so deep and radical, as to destroy its identity with the Society of Friends, who had been invested by law with the enjoyment of property and civil rights. But if such a case be possible, it would seem to be a suicidal destruction of the body itself, leaving its property derelict. If heresy should infect individuals only, however numerous, they might be disowned and cast off, and the body remain sound, but if the ultimate and infallible judge of what is essential to Quakerism judges wrong, who, in pursuance of

are of general application, and of equal bearing upon whichever party is justly entitled to be recognized as truly representing the Society of Friends, in the matter at issue; and which are doubtless correctly stated by the Court, we have no controversy. But when they come to lay down the principles by which the Society should be governed in regard to the preservation of its Doctrines, and the administration of its Discipline, we find much which we cannot admit to be correct.

After disposing of the preliminaries above referred to, and stating that there are two conflicting bodies claiming to be Rhode Island Quarterly Meeting and New England Yearly Meeting, to which Swanzey Monthly Meeting belongs, Judge Shaw for the Court, says:—

"We are thus necessarily driven to the inquiry, which of these conflicting organizations is the true and legitimate successor, or, to speak more accurately, which of the two Yearly Meetings for New England, the two Rhode Island Quarterly Meetings and the two Swanzey Monthly Meetings, are the actual, identical, and real Yearly, Quarterly, and Monthly Meetings of the Society of Friends of those respective designations, and have continued so in one unbroken line, from a period anterior to this controversy, to the time of the commencement of this suit. The one must be so; when this is shown, it will also be shown that the other is not so.

"By what test shall this fact of identity and continuity be determined?

"At one stage of this controversy, it seemed to be supposed that it would depend mainly upon soundness of faith; an adherence to or dissent from speculative theological opinions and belief, and much evidence was taken upon that subject, and it was alluded to in the learned arguments addressed to us.

"It would seem to be inconsistent with the nature and principles of the Quaker system, so far as it is disclosed in the case before us, to be bound down, as a body, as a Christian denomination, to a precise unbending rule, in matters of speculative opinion. They profess to believe in the continued influence and presence of the Holy Spirit to the mind of each individual, humbly waiting for its manifestation, to aid in the discovery of divine truth. It would seem, therefore, that they must suppose it possible, that new truths may be discerned, and so manifested as to require the assent of the true disciple, and thus add something to his existing faith. It is also true, as we understand, that they profess to believe that the Scriptures are given by inspiration, and are the unerring guide to Christian truth; and if any man suppose that he has an inward light contrary or repugnant to the truth of the Scriptures, it cannot be a true light. But, perhaps, there is no inconsistency in believing that the Scriptures of the Old and New Testament are a true and unerring guide to divine truth, yet, that all the truths of Scripture have not yet been made manifest to the imperfect mind of

man, and in the language of Father Robinson of Leyden, that 'more truth is yet to break forth from the Holy Scriptures.' Should such be the fact, should the testimony of the Scriptures and the influences of the Holy Spirit concur in bringing to the conviction of humble, sincere, and inquiring minds, the knowledge of further Christian truths, manifested with a brilliancy and clearness not to be mistaken, it seems perfectly consistent with the avowed principles of the Society of Friends, to adopt and sanction them, although they were not known to Pennington, Barclay, Fox, and the respected founders of the Society, and under a full belief, that if the same light had been thrown on the same truths in their day, these sincere and seeking men would have humbly and devoutly embraced them.

"We would not be supposed by this to intimate that the Quakers have no creed, no theological tenets to which they are strongly attached, and no superintending watchfulness over the soundness of the faith of their members and subordinate meetings, or that they allow any great latitude of discussion to their members on theological subjects. On the contrary, the Discipline expressly prohibits the publication of all writings relating to their religious principles or testimonies, unless first laid before the Meeting for Sufferings, for their advice and concurrence, and obtaining their approval of them.

"What we mean to say, is this; that, if after solid and weighty consideration, humbly and conscientiously awaiting the guide of best wisdom, the Yearly Meeting should fully unite in the proper as well as the Quaker sense of that word, in adopting some modification of their creed, or of their speculative opinions, adhering to their great principles of love and fraternal duty, it would, upon their professed principles, seem too much to say, that they would thereby cease to be Quakers, and cease to be the Society of Friends. Especially, we think, this could not be asserted by Meetings and individuals subordinate to them, who owe, ecclesiastically, allegiance to them, and to whom, so long as they remain subordinate, the decisions are final and infallible, as well in matters of faith as of conduct. All disaffected members, having full liberty of conscience, might undoubtedly depart from such opinions, and adopt different tenets; perhaps they might, by so doing, become better theologians, better Christians, and better men; but they would cease to be Friends in unity with such Yearly Meeting, and with the Meetings and individuals subordinate to it. Such dissenting individuals might form themselves into Yearly, Quarterly, and Monthly Meetings, but this would be a new organization, and not the identical body to which they had been formerly attached.

"We should be unwilling to say, that there may not be a departure from the fundamental principles on which the Society is founded, on the part of the Yearly Meeting, the responsible head and representative of the whole body, in fact the Society itself, so deep and radical, as to destroy its identity with the Society of Friends, who had been invested by law with the enjoyment of property and civil rights. But if such a case be possible, it would seem to be a suicidal destruction of the body itself, leaving its property derelict. If heresy should infect individuals only, however numerous, they might be disowned and cast off, and the body remain sound, but if the ultimate and infallible judge of what is essential to Quakerism judges wrong, who, in pursuance of

that this reference—made as it was against the consent and under the protest of the other party, with the representatives selected as we have already shown—was at best but a poor caricature of the administration of justice and right. In doing all this had the Yearly Meeting "taken no step to be complained of?" These things were fully brought to view and ably commented upon in the "Report" of Philadelphia Yearly Meeting, which was appended to the deposition of one of the witnesses, and was in evidence before the Court, who nevertheless declare themselves to be of the opinion "that the Yearly Meeting of which Gould was Clerk, was not organized according to Discipline, but that they separated to avoid the *rightful authority* and controlling action of the Yearly Meeting, to which they were subordinate."

The circumstance that it was a *minority* of the representatives who proposed the Clerks, and a *minority* of the body who united with them therein, we cannot but think must have had a strong, if not a controlling influence in bringing the Court to this conclusion. But, in the progress of this desolating heresy, separations have recently taken place in other Yearly Meetings, and among others in that of Ohio, where the minority of the representatives who proposed a Clerk, and of the Meeting, are of the Gurney party.—And now that party, through their periodical "The Friend's Review," aver that in such a case the report of a minority of the representatives is sufficient, if no other names were offered at the time, and adduce legal authority in support of this position. And this, notwithstanding the majority or body of the representatives reported that they had been unable to agree upon Clerks, and those of the last year were continued by minute, as had been done several times before in that Yearly Meeting. However, we should hold the reasoning of the "Review" far better, if the minority in such a case were loyal to first principles, and the majority not so. Forasmuch as the spirit is before the letter, and the substance of more account than the empty form, there could scarcely be any law or discipline against the separation of one party from another, when their principles are as contradictory as the Quaker principles and the Gurney principles are. For those who depart from the principles of a Society, which are the bond of its union, however anxious they may be for it, can have no "*rightful*

authority" to control those who have kept to first principles, be their disparity of numbers what it may. The apparent inability of the Court to appreciate this doctrine, that those who hold to the original principles of the Society in the Truth, must be accounted the genuine Society without regard to numbers, seems to have led to the (in our apprehension) erroneous judgment which they have rendered.

The want of a familiar acquaintance and "rightful" understanding of the order and usages of the Society of Friends may be offered as an apology for their opinion; which appears not to be founded on any law adduced by them aside from the Discipline of the Society—and *that* misconstrued amid the contradictory testimony brought before them. When our Discipline was formed, there was probably no apprehension of a lapse from principle, manifested in such sweeping numbers; or that influences could be brought to bear which would carry away such a multitude, whether actually unsound or not, in the support of leading men who have been and are making so great efforts to change the faith of the Society; therefore no rule was provided—perhaps none fully adequate could have been provided—to meet the exigency that has now occurred. Hence there appears to be no way for the settlement of such a matter, but by an umpire agreed upon by the parties themselves, or by submitting the disposition of the property to the civil tribunals. Nor can a *doctrinal question*, such as now exists, be decided and settled by a Yearly Meeting itself, if one half or more of that body, or perhaps even if the controlling and influential members; become irreclaimably apostate in the doctrines at issue; in such case the body can only be purged by a sifting or separation, so that the sound may be disencumbered of the unsound, and enabled by the help of the Lord, through faithfulness and singleness of heart, to continue to support their original doctrines and testimonies.

But for the civil tribunal to take the Meeting-houses and lots from those who have always held to the Society's original principles, and for whose use they were intended, and give them to those who have brought in and adopted other doctrines, and this too upon the plea that our doctrines *may be thus modified and changed with impunity*, is a greater departure from sound principles and just proceedings, than we were prepared to expect

at the hands of the Supreme Judicial Court of Massachusetts; and we trust we have shown that the opinion of the Court is not justly entitled to become an authority or precedent in regard to matters similar to those at issue in this case.

NOTE.

Whenever we have implicated our opponents as having violated the Discipline, we always refer to items in our Book of Discipline, to which they acknowledge themselves amenable; and when we allude to usages, we feel obliged to make those usages appear. And the defendants feel safe in asking the plaintiffs to adduce a single paragraph in the Book of Discipline which they (the defendants) have violated in the whole course of this controversy.

LETTER OF Z. EDDY,

OF COUNSEL FOR THE DEFENDANTS.

To the Committee of the Meeting for Sufferings for New England Yearly Meeting.

FRIENDS,

I understand there was some disappointment among the Society, on hearing that the Gurneyites had not been adjudged *seceders* or *separatists* by the Court *on doctrinal grounds.* But such should not have been the case; at least, Friends who first consulted and engaged Mr. Webster, Judge Warren and myself, ought not to have been disappointed. Neither of us gave them assurance that the Court would rule the case on *that point. Secession and separation,* in an *ecclesiastical* point of view, is certainly chargeable on the Gurneyites, by reason of their departure from the doctrines of the Society. We were well aware, however, that the course of the decisions in Massachusetts for nearly fifty years, was such, that an investigation of religious doctrines would scarcely be sustained by the Judges, and that we ought not to expect the decision of the case to be made on that ground. Our personal knowledge of the views of the Judges discouraged every such expectation. Legal *secession* or *separation* in Massachusetts, is an *outward* act, a separation from one Meeting and the setting up of another. It was therefore our determination to argue the whole case upon the due organization of the Swanzey Monthly Meeting of August, 1844; and both Mr. Webster and myself were confident of success. Judge Warren was of the same opinion. *He* early left the bar, and Mr. Elliot was engaged in his stead,—and I have reason to believe his views coincided with ours. We agreed that the answers should be drawn in such a way as to present the true cause of the schism in the Society; and that the unsound doctrines of the Gurneyites should be drawn out and exhibited to the Court—and thus it should be shown how and with what views the émeute (or out-break) was made in the Monthly Meeting. When the evidence was taken, it was pushed out into so many points and particulars, that Mr. Webster declined the examination of it, and desired to be let off from his engagement by

reason of his public duties as Secretary of State, which would not afford him sufficient time for that purpose.

But I embodied and compacted the evidence and gave him an argumentative view of it, which satisfied him that the ground which we had originally taken might well be maintained—and he agreed "to hold on." A special time was assigned by the Court for hearing the case; but about two weeks before the time arrived, he found himself so absorbingly engaged in his public duties, (as he informed me,) that he could not be present at the time assigned; and Mr. George Wood, of New York, was engaged to make the closing argument. Friends had read his arguments in similar cases in the Middle States, and found he had succeeded in procuring decisions of the Courts favorable to ecclesiastical secession founded on doctrine. I gave them no encouragement for expecting his success in *our* Courts upon that point, but advised a selection from our own Bar. I ascertained the same day the argument was made, that the Court considered the *ecclesiastical* secession as the main point in the case, which in my opinion it was not; although beyond doubt the *legal* secession on which we relied for success, was but the result of the doctrinal differences existing in the Society. I have seen the argument of Mr. Wood, and think its strength was wasted in attempting to sustain the case by arguments which, though successful in the Courts of New Jersey, could not succeed in Massachusetts, and that the *full strength* of the argument which Mr. Webster and myself had agreed upon, was not presented by him.

I have not seen Mr. Elliot's; both he and Mr. Wood were furnished with our views, and both were informed by me that we did not hope for success on the ecclesiastical ground; but Mr. Wood seemed very unwilling to abandon it.

As Mr. Elliot is absent, I can only say, that it is to be presumed he duly presented the main argument, although he assisted Mr. Wood in enforcing his views of doctrinal secession. In view of the extended opinion of the Court, and by desire of Friends, I have consented to furnish the substance of the argument prepared before Mr. Webster left the case, and which I presume was duly presented by Mr. Elliot.

I have seen the "Review of the Opinion of the Court by the Meeting for Sufferings" in respect to the doctrines of the Gurneyites, and their consequent ecclesiastical secession, and commend it to the consideration of sound Friends and candid jurists.

Z. Eddy.

Middleborough, February, 1855.

Commonwealth of Massachusetts.

SUPREME JUDICIAL COURT.

BRISTOL, ss. APRIL TERM, 1852.

In the case of

OLIVER EARL AND OTHERS, IN EQUITY, PLAINTIFFS,

vs.

WILLIAM WOOD AND OTHERS, DEFENDANTS.

Defendants' Counsel.—D. WEBSTER; GEORGE WOOD, N. Y.; Z. EDDY; T. D. ELLIOT.

OPINION OF THE COURT.

The Court are of opinion that the Complainants are entitled to a Decree for the establishment of their title to the Land and Meeting-House, as prayed for in their Bill.

REMARKS OF DEFENDANTS' COUNSEL

In view of the Extended Opinion of the Court, given by Chief Justice Shaw.

The Plaintiffs claimed to be Trustees of the Meeting-House and Land mentioned in the Bill, as Overseers of "Swanzey Monthly Meeting" of Friends, and prayed the Court "for the establishment of their title." The Defendants deny that they are "the true and legitimate Overseers" of the Meeting, and deny that the trust ought to be declared and established in their favor,—claiming that they themselves were appointed such by said Meeting, Thomas Wilbur being Clerk thereof: the Plaintiffs claimed that they were duly appointed by that Meeting, David Shove being Clerk thereof, and that the Yearly Meeting confirmed and established the proceedings of that Meeting. The Defendants deny that their title can be affected by the proceedings of the Yearly Meeting, as set forth by the bill. They admit that there is a schism throughout that Meeting, caused by the unsound doctrines published by J. J. Gurney,

and embraced by a large portion of its members; and they allege that these doctrines are a departure from the Faith and Discipline of the people called Quakers; and that the Meeting which claims Shove to be its Clerk, and the Yearly Meeting claiming Sherman to be Clerk, have embraced these doctrines and become separatists: that the Plaintiffs' claim is founded on a spurious and disorderly Meeting, and that the Defendants' claim is under an orderly and true Meeting, the proceedings of which are fully set forth in their answer; and as matter of law and usages of the Meetings of Friends, they rely that its organization was right and its proceedings correct: they also set forth such of the doctrines and discipline of Friends as they deem material to the issue, and the special matters in which the Gurneyites had varied from them; also the usages and discipline of their Society; and as to these the Court do not take notice of any difference between the parties, except as hereinafter mentioned.

The statute under which the parties respectively claimed, is in these words:—"The Overseers of each Monthly Meeting of the people called Friends or Quakers, shall be a *body corporate*, for the purpose of taking and holding in succession, all grants and donations of real and personal estate, according to the terms and conditions of the grants and donations, and to prosecute and defend in any action touching the same." Rev. Stat. 206.

There was much evidence in the case to prove that the Meeting, under which the Plaintiffs claimed, had embraced the unsound doctrines of Gurney. But, in the opinion of the Court, the whole was superseded and silenced by the proceedings of the Yearly Meeting in June, 1845. And they say, "It is now conceded that, at that Meeting, a narration and declaration was put forth, in which they avow and state their belief in a manner, admitted to be in conformity with the ancient testimony of Friends, and satisfactory to those who affix the imputation of heresy to that same Yearly Meeting." The present process or suit was commenced in April preceding this Meeting, and the counsel for the Defendants contended that this was an eleventh hour repentance, made to avoid the mischievous consequences of what they had already done, and came quite too late to have any weight in the consideration of the case before commenced against them; having reference to an action at law

then pending which the present suit was brought to supersede. But the Court thought otherwise. I have no remarks to make on the opinion which relates to this point, as the Defendants' counsel always relied for success upon another as conclusive and irrefragable: and more especially as I consider *that* as a mere *ecclesiastical matter*, of which the Committee in their Review, have taken due notice; in which they show that that narrative and declaration is very far from being "satisfactory."

The Court then say, "The test question is whether Oliver Earle and his associates, the Plaintiffs, or William Wood and his associates, the Defendants, were the true, rightfully appointed Overseers of Swanzey Monthly Meeting in April, 1845, when the suit was brought. The Legislature, in providing for holding property in succession, for the use of Quakers, and designating Overseers of Monthly Meetings for that purpose, must have intended Overseers appointed or set apart in an orderly manner, according to the fundamental rules and usages of Quakers. The Plaintiffs then must show, in order to entitle them as a corporation, to a conveyance of this property, that they were Overseers so constituted, and so, by force of the statute, were *de fàcto* a corporation, competent to take and hold the property. We must therefore inquire and judge, by this standard, of the correctness and regularity of the proceedings by which each party claims to be a corporation by force of the statute." The decision of this question depends upon another. Whether or not David Shove was the legal and authorized Clerk of Swanzey Monthly Meeting of August, 1844?—(for at that Meeting they claimed to have been appointed)—or whether Thomas Wilbur was the regular and authorized Clerk of that Meeting? The parties producing certificates of their appointment—the Plaintiffs from Shove, and the Defendants from Wilbur.

In the investigation of this question, the usages of the Society of Friends were proved by numerous witnesses and the Book of Discipline; all the transactions of the Meeting were clearly proved, and the legal authorities applicable to the case, were also cited and read; all of which were victorious for the Defendants; and their counsel relied and still relies that there was full proof that Thomas Wilbur was the true and legal Clerk of that Meeting, and that his records and minutes (con-

firmed by the testimony) were conclusive evidence of the appointment of the Defendants as the true and only Overseers of the Meeting. How could there be a doubt? The facts were clear, uncontroverted and uncontrovertable, and as Judge Twisden said, "The law was on their side." Here are all the facts: Immediately after the meeting for worship was closed, Thomas Wilbur, who had long acted as Clerk, had taken his seat at the Clerk's table, and before the meeting was opened by the usual minute, and before any minute from the Quarterly Meeting was read, *John Meader (who was not a member of the meeting)* rose and "requested the Clerk to pause a little," and proposed that Thomas Wilbur should leave the table, and that David Shove should sit there and act as Clerk. Some spoke in approval, some against the proposition, saying that Thomas Wilbur was the duly authorized Clerk. The number of those who opposed the proposition was as great as those who favored it. No vote, no sense of the Meeting was declared, as to the appointment. (Refer to the testimony of Buffinton, Amos C. Wilbur, and Thomas Wilbur.)

Those who favored the measure claimed to be a Committee from a Superior Meeting, and were called on by several Friends, and especially by Wilbur, the Clerk, to produce, or hand in, the minute of their appointment. This was not produced or handed in; and a member proposed that the Clerk should open the Meeting, and complained of the interruption. While the Clerk, Wilbur, was reading the opening minute, John Meader urged David Shove to go to the table—he hesitated, and two Friends (not members) aided him to the seat, which, being occupied by the Clerk, (Wilbur,) Meader said, "Take another seat." Shove passed over the other side and sat down, and some one furnished him with a board, and *he wrote a minute of his own appointment as Clerk of the meeting.* Friends complained to him that he was acting disorderly. The Clerk, Wilbur, read to him the statute against disturbing meetings. John Meader moved an adjournment, and Shove said, in the midst of considerable commotion, "The Meeting is adjourned." This was done before any of the business of the meeting had been attended to. Wilbur, the Clerk, addressed the Meeting, and said, "The Meeting is not adjourned," and desired them to attend to the business of the Meeting. Many left the hou

and the commotion subsided; and the Clerk (Wilbur) proceeded to transact the business of the meeting. The Clerk (Wilbur) was re-appointed and also five Overseers, (the Defendants,) without opposition. In the afternoon, *after the Defendants were orderly appointed Overseers*, David Shove returned with these disturbers of the meeting, and *not till then* the Plaintiffs were appointed Overseers of the Monthly Meeting, as certified to have been done by Shove. Who will stand up for the "orderly appointment of the Plaintiffs?" Here was the very height of *disorder*. Here is John Meader, with half a dozen others, not members of the Meeting, making motions and speeches before the Meeting is opened, and when called to order, claiming to be Committee-men from a Superior Meeting, and when called upon for the minute of their appointment, refusing to produce it; David Shove making a minute of his own appointment as Clerk, objection was made by the regular members, and amid "confusion worse confounded," declaring the adjournment of the Meeting; and after the regular Meeting is held and its Overseers appointed, returning and acting as if nothing had been done, and appointing Overseers, as if none had already been appointed. Was it ever known that a Meeting, and an election of this sort, has been sustained by any court of law in Christendom? Let us recur to some of the illegal features of this transaction under which the Plaintiffs claim. *First;* here is a motion made by one not a member of the Meeting and advocated and supported by others not members of the Meeting. But they say that they were Committee-men of a Superior Meeting. And what of that? The evidence in the case does not show that *such*, by Quaker usages, could do any thing more than *advise*.

But they are stripped of this pretence by not producing, or handing in, the minute of their appointment. Such is the law in all analogous cases! If one claim to act upon the rights of others, and claim a legal authority, he must produce that authority, on request, or he is to be considered as acting without authority.

The Philadelphia Yearly Meeting was in evidence to show the usage, and that Meeting say, "They cannot plead the authority of the Quarterly Meeting for the course they pursued, inasmuch as those who proposed it and assisted therein, had

exhibited no minute from that Meeting, directing the Monthly Meeting to be re-organized, and clothing them with power to act in the case." Philadelphia Report, p. 37.

Secondly; They (John Meader and the Committee, if they were such) had no right to make the motion which they did make and assist to consummate; it was disorderly and void; because "it was made and consummated *before any minute opening the Meeting had been made by the Standing Clerk,* (Thomas Wilbur,) or any minute from the Quarterly Meeting was produced." This is said by the same Philadelphia Meeting, page 37, and they add, "No portion of the members of a Monthly Meeting, even supposing them to be a greater number, which in this instance does not appear to have been the case, could be justified in thus acting; but they must by such an act subject themselves to all the consequences of separating from their Monthly Meeting, and setting up a Meeting unauthorized by the Discipline."

This is a rule of law sanctioned by the highest authorities. The great Presbyterian case, cited at the trial, wholly turned on this point. There the motion to appoint a Moderator, was made before the Meeting was opened.

Gibson, Chief Justice, says, "The Moderator was the mechanical instrument of their organization, and until that was accomplished, they were subject to *his* rule and not he to *theirs.* The motion was *premature.* When the chair is actually full, nobody but the person in the chair can put the question. This is the rule of all deliberative bodies. The Moderator and Clerks continue in office to perform certain acts, and until they are performed, they are beyond the reach of the assembly."* Miller's Report, 8vo. pp. 596.

A great number of witnesses testified that the usages of the Meetings of Friends were in accordance with this decision. But here is judicial authority in a case between the Orthodox Quakers and the Hicksites.—Miscellaneous Repository, vol. 2, p. 12, Ohio. Taylor, Clerk the previous year, was preparing to open the Meeting, and while he was doing so, Hillis was called to act as Clerk, and wrote an opening minute; and to avoid disor-

* This case was tried in the State of Pennsylvania, and this decision made on full argument of counsel; and the General Assembly of the Presbyterian church became thereon two bodies—Old School and New School.

der, the Orthodox Friends adjourned, the Hicksites being more numerous.

The Judge said, "I think I may venture to say, that in no deliberative assembly in the United States, would such a motion be in order until the assembly was opened and organized, unless the motion was necessary to its organization. It is not in order according to the established mode of proceeding in the Yearly Meetings of the Society of Friends." See Foster's Reports, p. 11. Chancellor Ewing says, "The Clerk of the preceding year is to act without any new appointment, and until others are brought forward and regularly united with." This is in accordance with the evidence of an aged Friend, who testified that such had been the practice, for sixty years, during which he had attended the Meetings. Mr. Jefferson in his Manual says, that "the only method by which the minority can defend themselves against improper measures, is through the forms and rules of proceeding which have been adopted and become the law of the house, by a strict adherence to which the weaker party can only be protected from the irregularities and abuses which the forms were intended to check. So the Senate and House are always opened by reading the journal of the previous day." Cushing in his Manual says, "It is the duty of the presiding officer to open the Meeting by taking the chair, and calling the members to order, and announcing the business of the Meeting."

Thirdly: Beyond all controversy, according to unquestionable law and the evidence, Thomas Wilbur rightfully held the chair, did not leave it, proceeded with the business of the Meeting, and that Meeting chose or appointed the Defendants the true and legitimate Overseers; and the Assembly which afterwards came in with David Shove, and undertook to appoint the Plaintiffs Overseers, was a disorderly Meeting, a Meeting in every legal point of view, so entirely void of authority, that *no* body, politic or ecclesiastical, could make it good, short of Legislative action; and even *that* could not divest the Defendants of the right and title, as Trustees, which vested in them at the moment of their election. So well satisfied was Mr. Webster of this, that he was not willing that the case should be argued on any other point. But that which could not make him for a moment *doubtful*, has affected the Court in a very

different manner, and must now be adverted to and examined.

The Court, after taking a very correct view of the outlines of the case, and a portion of the Discipline of the Society of Friends, come to a very novel and startling result, which certainly relieves *them* from all trouble in the examination of the great body of the law and evidence in the case, as we have just now presented it. "The Yearly Meetings have a final and controlling jurisdiction in all matters of faith and religious duty, of administration and discipline, as well as of manners and conduct of all Quakers within its limits. *It is final and conclusive, because there is no superior body which can call its decision in question.* It is conclusive, in the same manner in which the judgments of the highest Courts are conclusive, not because it is necessarily wiser or better than those of other Courts, but because it is the tribunal of last resort, *and the constitution and laws have created no tribunal to re-examine them!*"

If this be so, the ecclesiastical law is paramount to the civil law; for among all the various denominations of Christians, there is a "final and controlling ecclesiastical jurisdiction," and no superior to call their "decision in question." But it is very certain that the law is otherwise; and the Society of Friends claim no such exemption from the liability to have their decisions re-examined.

The Philadelphia Yearly Meeting before referred to, Rep. p. 29, gives a different construction to the usages and discipline of the Society in respect to the powers of that Meeting: "Although each Yearly Meeting is the judge of its own Discipline, there is an understood and implied necessity of conforming its decisions to principles of religious duty and Christian doctrine, OF CIVIL LIBERTY AND CONSTITUTIONAL RIGHT COMMON TO US ALL, and always acknowledged and held as inviolable by us." And such is the law, beyond all controversy.

Burns's Ecclesiastical Law, 141—145, "As *estates* are dependent on promotions and dignities, and inseparably connected with them, which rest in the sole determination of the common law, the *Courts of common law do inspect and regulate the proceedings of the ecclesiastical Courts, and where they proceed against the rules of law, they frequently interpose.*

These proceedings are agreeable to the common practice and reason of mankind, because the party accused has the liberty of defence." He puts the case of a clergyman *deprived of his parsonage* by the ecclesiastical Courts, a case fully in their jurisdiction, which yet the Courts of law will re-examine and set right.

Here is a case in our own Reports which Mr. Webster relied on as settling this matter beyond all question. Murdock against Phillips Academy, 12 Pick., 244. "A vote to remove from office without the substantial benefit of trial, is invalid; he is entitled to have the charge against him fully, plainly and substantially set forth, and to be heard by counsel; this is necessary in the ordinary course of proceedings to cause a *legal deprivation;* 1st, a citation or monition to cause a party to appear; 2d, a charge given to which he is to answer; 3d, a proper time assigned for the proofs and answers; 4th, liberty of counsel to defend his cause and except against proofs and witnesses; 5th, a solemn sentence *after hearing the proofs and answers.* These are *fundamental* in all judicial proceedings in the *ecclesiastical Courts in order to a deprivation;* and if they be not observed, the party may have a remedy by a superior Court."

8 Cowen's Rep. 457, Dutch Ref. Ch. agt. Bradford. "The non-observance of these principles is against natural justice, and they are as much to be regarded in ecclesiastical Courts, as in Courts of common law." These principles were fully recognized in Thompson vs. Rehoboth, Mass. Rep. He sued for his salary, and the Defendants relied upon the result of a council which had dismissed him. It was an ex parte council, called by the parish, and it was proved that several of the council had prejudged the case; and this was held by the Court sufficient to set aside their proceedings. Nothing can be more decisive. Cow. 437, Martin vs. Hind, 2 Burr, 731, Rex vs. Liverpool, 2 Ld. Ray, 1834, King vs. Un. Cambridge. "The parties, in these cases, are entitled to have their claims examined according to the rules of common law." They were ecclesiastical cases. The matter and the law are clear, and no cases to the contrary are cited by the Court, and none, I think, were cited by the counsel for the Plaintiffs.

It seems that the Court gave very little thought or attention either to the law or the evidence on this, to say the least *very*

pregnant part of the case. They certainly gave no opinion upon it, and scarcely an inclination of an opinion. They say, "If the case depended solely or mainly on this point, we should go into a more minute and thorough examination of the evidence as to the exclusive authority of the Clerk, for the time being, to propose every question, and especially as to the right and power of the Committees of the Quarterly and Yearly Meetings, and other Friends to attend, advise and act in Monthly Meetings." The evidence was very full and extensive, and the argument thereon *astute*, and it was very convenient to get over it *per saltum*, and to place the whole matter on the transcendent jurisdiction of the Yearly Meeting. For they repeat, "The Yearly Meeting is recognized as the tribunal of last resort; its decisions of all matters within its jurisdiction are conclusive, and all true Friends are bound by them."

It seems the Court thought they had some right to re-examine the proceedings of this Meeting, for they ask in regard to one of its decisions, "Was this question fairly decided?" and then attempt to show by the evidence that it was. But the question before them—*What was it?* It was a question of the *reception of representatives;* a question which the meeting certainly had a right to decide, and that *conclusively;* for all deliberative assemblies must necessarily have the power to judge of the qualification of their own members. *The report of the Committee was on this subject only.* If the Yearly Meeting acted beyond this, they exceeded their jurisdiction, and their doings were void.

But the *palpable, transparent, and flagrant wrong*, and which is not only void in law, but very astounding to sound Friends and reprehensible in the highest degree, remained to be consummated. The Court say, "At the same Meeting" (by its subsequent order) "a narrative was put forth as the official and authoritative judgment of the Meeting, adopted by them, and ordered to be authenticated as their act, in which the Plaintiffs are recognized and declared as the rightful Overseers of Swanzey Monthly Meeting, appointed in August, 1844." We have looked into that "narrative," referred to by the Court, and cannot find that there is any such recognition and declaration; cannot find that the Yearly Meeting have decided that the Plaintiffs were the rightful Overseers of the Swanzey Month

Meeting. And on inquiring of the opposite party, they do not say that such a declaration was made. If none such was in the case, all the reasoning of the Court falls to the ground. But let us see the inference.—The Court here recognize the transcendent power of the Yearly Meeting to *make*, *create* (not *elect*) the Overseers of the Monthly Meeting; an idea, to sustain which there is not a particle of evidence in the case. But if they intend (which they do not say) that it was a confirmation of the proceedings of the disorderly Meeting of which David Shove was Clerk, the answer to that has already been given: the Defendants were duly chosen Overseers, and the right to the property was vested in them, *as a corporation*, (according to the statute before quoted,) before the pretended appointment of the Plaintiffs by the disorderly Meeting held by David Shove, and they could not be deprived of their office but in the manner which has been pointed out. As they were chosen for the year, they had a right to the office and to the property during the year, unless a *legal deprivation and removal* should be made; and the authorities I have cited show how this is to be done, to-wit, by *complaint*, *notice*, *a hearing* by themselves at a time appointed, and a final solemn sentence. Not one of these things was done, and the removal is by *implication* only, to-wit, by recognizing and declaring that the Plaintiffs are the Overseers, (if they have so declared.) It would seem that though they knew they could not disfranchise the Defendants, they could condemn the Meeting which appointed them,—"though they could not drown the men, they might sink the ship," and so leave them to save themselves if they could; and they so far pronounced for the illegality of the Meeting as to reject their representatives through the Quarterly Meeting. But this declaration of the Yearly Meeting, if there was any such, (and I think there was not,) was an after thought and a subterfuge, and a judgment without a trial, and is not entitled to any weight in the re-examination of the case before a civil tribunal.

But as to this transcendent power of the Yearly Meeting—as between it and its subordinates—if they *have* this entire control and government; if they may put down a Meeting, and may set up a Meeting; if they may waive irregularities in the proceedings of subordinates, as other churches and commu-

nities do; if they may forbear to insist upon disorders, and even if they may receive disorderly Meetings into fellowship; if they may receive into their Meetings such representatives as they may see fit, and exclude such as they see fit, *yet they cannot extend their transcendent authority to the deprivation of a Meeting, much less the Overseers of a Meeting, who, as such, have civil rights, and as a corporation, have rights of property,* and divest Meetings or Overseers of these rights, *without proceeding in the way which has been pointed out,* to-wit, *complaint, trial, and sentence.* The Courts of law will not permit this. In the case of Phillips Academy, they expressly say, "There must be the substantial benefits of a trial;" "They must proceed according to the rules of common law, the principles of justice and equity and common right." In respect to mere ecclesiastical rights and privileges, where there are no civil rights concerned, the case may be otherwise. But nothing can be clearer than that no superior ecclesiastic can deprive an inferior of his office or his property, or his civil rights of any sort, though acting within its jurisdiction, unless it be done in accordance with the principles of common right recognized in the *law of deprivation.* The estate in question became vested in the Defendants as a corporation, the moment they were chosen by the *regular*, and I may say, *constitutional* Meeting; they were entitled to hold it a year, unless by some wrongful act working a forfeiture; and that wrong act must be complained of, and a trial thereon in due form. They were chosen by the Monthly Meeting, according to the Book of Discipline, which makes no provision for the assent of a superior Meeting thereto necessary, and gives no veto power to any such Meeting; and gives no power to the members or officers of any superior Meeting to act in that choice, or to intermeddle therewith, except by way of advice; no, not so much as to make a motion in the Meeting, Dis. 43. Being thus a corporation, no superior Meeting can disfranchise them, or, if they can, not otherwise than according to the *law of deprivation,* which has been stated. To say that, after their election, a disorderly Meeting may choose others, and that a superior Meeting may *waive* the disorder and confirm the election, and *in that way,* deprive the Overseers first chosen of their office and the property vested in them as a corporation,—is to accord to the Yearly

Meeting greater power than any legislative body in the United States possesses under its Constitution.

That Thomas Wilbur was the legal and rightful Clerk to open the Meeting and read the minutes of the preceding Meeting, there can be no reasonable doubt in the mind of any candid man; he *did* so, and after doing so, no motion was made to displace him. John Meader's motion, by *all the authorities*, was *premature*, and he was, besides, not a member of the Meeting. If an officer of a Superior Meeting, he had no right to make the motion or proposition, and if he *was* and was so *entitled*, he had no such right, *until he, on request, should produce his credentials, which he did not do!* Wilbur was again appointed Clerk, and the Defendants were appointed Overseers, *before* the pretended choice of the Plaintiffs as Overseers in Shove's Meeting; a choice which, in every point of view, was a mere nullity. The estate then vested in the Defendants, as a corporation. The election of others *afterwards*, in the afternoon, was a void proceeding; and if it had been done by an orderly Meeting, it would have been inoperative, and could not work a removal or deprivation of the Defendants. And if afterwards the Yearly Meeting had waived the disorder and confirmed *in words*, the election of the Plaintiffs, without proceeding to the *deprivation* of the Defendants according to the rules of law and justice, such confirmation would not work a removal or deprivation of the Defendants.

In answer to this argument, so clear and satisfactory, here is all that is to be found in the extended opinion of the Court; (last page.) "It was *intimated* in the argument that the rights of the Monthly Meeting, could not, by the Discipline, be drawn in question before the Yearly or Quarterly Meetings without a complaint of mis-conduct, notice and opportunity to answer. But there was no question here, as to the rights of the Swanzey Monthly Meeting; but as to the claims of certain individuals, to be the *rightful Overseers*, representatives and officers of the Swanzey Monthly Meeting."

Here is an *enigma* to all Friends concerned, and not much less to their counsel. The argument is, that the Defendants are a *corporation, and cannot be deprived*, but by *due process*, according to common right and justice. The Court say "it was *intimated*" in the argument that the *Meeting* could be no

otherwise deprived; but that this is a question as to the claim of certain persons to be *Overseers. Certainly that was the question;* and the argument was that the Defendants were duly chosen Overseers by that Meeting, and that a Superior Meeting could not deprive them of their office or estate, merely by pronouncing in favor of others afterwards chosen at a disorderly Meeting. That the Court should think they had answered this argument in this summary manner, is a mystery. It would seem, they either misapprehended the argument or were not *fully*, or at least not consciously possessed of the facts.

Here is the whole case. The *opinion* is not well received by the bar, and cannot heal the division in the Society of Friends. The appeal is to the gentlemen of the bar, that the decision ought not to stand as a precedent to be relied on in cases hereafter to be tried.